

1 Jess B. Millikan, SBN 095540  
E-Mail: jess.millikan@bullivant.com  
2 Samuel H. Ruby, SBN 191091  
E-Mail: samuel.ruby@bullivant.com  
3 Judith A. Whitehouse, SBN 198176  
E-Mail: judith.whitehouse@bullivant.com  
4 BULLIVANT HOUSER BAILEY PC  
601 California Street, Suite 1800  
5 San Francisco, California 94108  
Telephone: 415.352.2700  
6 Facsimile: 415.352.2701

7 Attorneys for Defendant  
United States Fire Insurance Company

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 COPART INC.,

13 Plaintiff,

14 vs.

15 CRUM & FORSTER INDEMNITY  
COMPANY<sup>1</sup>, UNITED STATES FIRE  
16 INSURANCE COMPANY, and DOES 1-10,

17 Defendants.

18 AND RELATED COUNTERCLAIM.  
19

Case No.: C 07 02684 CW (EDL)

**DECLARATION OF JUDITH A.  
WHITEHOUSE IN SUPPORT OF U.S.  
FIRE'S MOTION TO COMPEL COURT  
APPROVED SITE INSPECTIONS**

Date: September 16, 2008  
Time: 2:00 p.m.  
Location: Courtroom E, 15<sup>th</sup> Flr.  
Magistrate Judge Elizabeth D. Laporte

20 I, Judith A. Whitehouse, declare under penalty of perjury under the laws of the State of  
21 California and of the United States that the following matters are true and correct of my own  
22 personal knowledge:

23 1. I am an associate at Bullivant Houser Bailey PC, attorneys of record for  
24 defendant U.S. Fire Insurance Company in the above-entitled action.

25 2. On June 25, 2008, Judge Elizabeth D. Laporte signed the Order Granting in Part  
26 Plaintiff Copart, Inc.'s Motion for Protective Order. That Order approved three site inspections  
27 as requested by U.S. Fire. The Order set no deadline for completion of the inspections. A true  
28

<sup>1</sup> Dismissed by Order Upon Stipulation (6/15/07)

1 and correct copy of Judge Laporte's Order is attached hereto as Exhibit A.

2 3. On June 27, 2008, Judge Claudia Wilken signed the Order Granting Stipulation  
3 Re Extension of Discovery Deadline for Completion of Depositions. That Order acknowledged  
4 the approval of three site inspections, but set no deadline for the completion of the inspections.

5 A true and correct copy of Judge Wilken's Order is attached hereto as Exhibit B.

6 4. On June 19, 2008, I conferred with Copart's counsel regarding choice of the  
7 yards to be inspected and designation of U.S. Fire's construction consultant. A true and correct  
8 copy of the email exchange between counsel is attached hereto as Exhibit C.

9 5. Copart's counsel specifically requested that no site inspections be scheduled  
10 prior to Copart's filing of its motion for summary judgment on July 10, 2008.

11 6. On July 11, 2008 I attended the inspection of Yard 6 in San Martin, California.

12 7. Further scheduling of the Florida site inspections was delayed to accommodate  
13 U.S. Fire's construction consultant's schedule.

14 8. On July 30, 2008 I consulted Copart's counsel regarding scheduling for the  
15 remaining site inspections in Florida. Copart's counsel declined to cooperate in scheduling the  
16 Florida site inspections, claiming that the deadline for completing those inspections had passed.  
17 A true and correct copy of the email exchange between counsel is attached hereto as Exhibit D.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on the 7<sup>th</sup> day of August, 2008 at San Francisco, California.

20  
21  
22 /s/ Judith A. Whitehouse  
23 Judith A. Whitehouse  
24  
25  
26  
27  
28

## **EXHIBIT A**

Philip L. Pillsbury, Jr. (SBN 72261)  
 Vedica Puri (SBN 176252)  
 Eric K. Larson (SBN 142791)  
 PILLSBURY & LEVINSON, LLP  
 The Transamerica Pyramid  
 600 Montgomery Street, 31<sup>st</sup> Floor  
 San Francisco, CA 94111  
 Telephone: (415) 433-8000  
 Facsimile: (415) 433-4816  
[ppillsbury@pillsburylevinson.com](mailto:ppillsbury@pillsburylevinson.com)  
[vpuri@pillsburylevinson.com](mailto:vpuri@pillsburylevinson.com)  
[rlarson@pillsburylevinson.com](mailto:rlarson@pillsburylevinson.com)

Attorneys for Plaintiff  
 COPART INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

COPART INC.,

Plaintiff,

vs.

CRUM & FORSTER INDEMNITY  
 COMPANY, UNITED STATES FIRE  
 INSURANCE COMPANY, and DOES 1-10,  
 Inclusive,

Defendants.

AND RELATED COUNTERCLAIM

Case No. C 07 2684 CW-EDL

**E-FILING**

**ORDER GRANTING IN PART  
 PLAINTIFF COPART, INC.'S  
 MOTION FOR PROTECTIVE ORDER**

Action Filed: March 20, 2007  
 Trial Date: November 10, 2008

Plaintiff Copart Inc.'s ("Copart") Motion for a Protective Order prohibiting defendant United States Fire Insurance Company ("USFIC") from making site inspections pursuant to its First Set of Entry (Site Inspection) Requests served on March 26, 2008 and a Second Set of Entry (Site Inspection) Requests served on April 28, 2008 came on regularly for hearing on

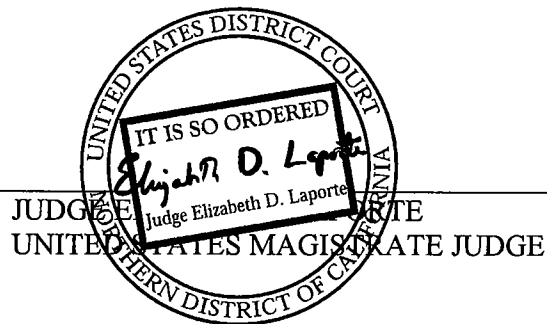
1 June 17, 2008 in Courtroom E of the above-captioned Court, the Honorable Elizabeth D.  
 2 LaPorte presiding. Eric K. Larson, Pillsbury & Levinson LLP appeared on behalf of Copart.  
 3 Judith Whitehouse, Bullivant Houser Bailey PC appeared on behalf of USFIC. After  
 4 consideration of Plaintiff Copart, Inc.'s Motion For Protective Order, the papers filed in  
 5 support of and in opposition to the motion, and the arguments of counsel, the Court has  
 6 determined that, good cause appearing, the motion is GRANTED in part as follows.

7 1. The Second Set of Entry (Site Inspections) Requests are barred in their entirety  
 8 by the Court's April 14, 2008 Order Re Extension of Discovery and Dispositive Motion  
 9 Deadlines, and Copart's motion is granted with respect to that Second Set.

10 2. With regard to the First Set of Entry Requests, USFIC may choose three of the  
 11 ten yard locations listed in that request and conduct inspections of those three locations only.  
 12 Copart's motion is granted with respect to the remaining seven locations.

13 3. By June 20, 2008, USFIC shall notify Copart of the three locations from its  
 14 First Set that it chooses to inspect and the identity of the consultants who will be performing  
 15 the inspections. By June 25, 2008, the parties will meet and confer regarding a schedule for  
 16 and scope of the inspections.

17  
 18  
 19 Dated: June 25, 2008



## **EXHIBIT B**

Philip L. Pillsbury, Jr. (SBN 72261)  
 Vedica Puri (SBN 176252)  
 Eric K. Larson (SBN 142791)  
 PILLSBURY & LEVINSON, LLP  
 The Transamerica Pyramid  
 600 Montgomery Street, 31<sup>st</sup> Floor  
 San Francisco, CA 94111  
 Telephone: (415) 433-8000  
 Facsimile: (415) 433-4816  
 E-mail: [ppillsbury@pillsburylevinson.com](mailto:ppillsbury@pillsburylevinson.com)  
[vpuri@pillsburylevinson.com](mailto:vpuri@pillsburylevinson.com)  
[rlarson@pillsburylevinson.com](mailto:rlarson@pillsburylevinson.com)

Attorneys for Plaintiff and Counterdefendant  
 COPART INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

COPART INC.,

Plaintiff,

vs.

CRUM & FORSTER INDEMNITY  
 COMPANY, UNITED STATES FIRE  
 INSURANCE COMPANY, and DOES 1-10,  
 Inclusive,

Defendants.

AND RELATED CROSS-ACTION

Case No. C 07 2684 CW

**E-FILING**

**STIPULATION AND ORDER RE  
 EXTENSION OF DISCOVERY  
 DEADLINE FOR COMPLETION OF  
 DEPOSITIONS**

**(TRIAL DATE UNAFFECTED)**

Action Filed: March 20, 2007  
 Trial Date: November 10, 2008

Plaintiff Copart, Inc. and Defendant United States Fire Insurance Company, by and  
 through their respective counsel herein, stipulate to the following extension of the deadline for  
 close of fact discovery solely for purpose of completing depositions necessitated by scheduling  
 conflicts of counsel and witnesses. *This extension will not affect the trial date or any other  
 dates currently calendared.*

///

1 Despite considerable efforts, the parties to this action were unable to schedule and  
2 complete all depositions (including depositions of non-party witnesses and out-of-state  
3 depositions) by the fact discovery completion deadline of May 30, 2008.

4 Site inspections requested by defendant have not yet occurred due to plaintiff's filing of  
5 a motion for a protective order, which was set for hearing before Magistrate Judge LaPorte on  
6 June 17, 2008. Judge LaPorte granted the motion for protective order in part and allowed  
7 USFIC to make site inspections of three of the locations designated in its first request.

8 The parties, therefore, agree to the following deadlines:

9 Completion of fact discovery for depositions only: July 18, 2008.

10 Deadline for expert witness disclosure: July 18, 2008.

11 Deadlines for three site inspections requested by USFIC to be determined by agreement  
12 of the parties.

13 The dates for the status conference and hearings on dispositive motions (August 21,  
14 2008) pretrial conference (October 26, 2008) and trial (November 10, 2008) will remain the  
15 same.

16 Specifically, the deposition of Marni Hansen shall take place on June 12, 2008 at 9:30  
17 a.m. at plaintiff's counsel's offices in San Francisco.

18 The deposition of Dennis McCarthy, individually and as a Rule 30(b)(6) witness, shall  
19 take place on June 12, 2008 at 9:30 a.m. in Newark, New Jersey.

20 The deposition of Carlton Clarke shall begin on June 13, 2008 at 9:30 a.m. in New  
21 York, New York, and shall be completed on a date on or before July 18, 2008 in Newark, New  
22 Jersey or New York, New York.

23 The deposition of Orvin Wills shall take place on June 25, 2008 at 9:30 a.m. in Atlanta,  
24 Georgia.

25 The deposition of Sherry Myers shall take place on July 2, 2008 at defendant's  
26 counsel's office.

27 The deposition of John Petrillo shall take place no later than July 18, 2008 in Newark,  
28 New Jersey or New York, New York.



1 The deposition of Ronald Keleman shall take place no later than July 18, 2008 in  
2 Newark, New Jersey or New York, New York.

3 On June 27, 2008 plaintiff shall produce a qualified witness or witnesses to testify on  
4 Subjects #5 and #10 of defendant's Rule 30(b)(6) deposition notice. Said deposition shall take  
5 place at defendant's counsel's office in San Francisco.

6 No later than July 18, 2008, defendant shall produce a qualified witness or witnesses to  
7 testify on Subject #2, "retention of emails" of plaintiff's Rule 30(b)(6) deposition notice. Said  
8 deposition shall take place in Newark, New Jersey or New York, New York.

9 The fact discovery completion deadline shall be extended to accommodate the  
10 foregoing matters and only the foregoing matters.

11 Any discovery motion concerning any of the foregoing depositions shall be filed within  
12 10 days of the last date upon which the deposition was to take place, as set forth above.

13 Any further discovery motion concerning site inspections shall be filed within 10 days  
14 of the dates agreed to by the parties for completion of the three site inspections.

15 All other deadlines and hearing dates (including the August 21, 2008 hearing on  
16 dispositive motions and status conference, the October 26, 2008 pretrial conference), and the  
17 trial (November 10, 2008) will remain unchanged.

18 Dated: June 23, 2008

PILLSBURY & LEVINSON, LLP

20 By: /s/ Vedica Puri

Vedica Puri

Attorneys for Plaintiff and Counterdefendant  
COPART INC.

24 Dated: June 23, 2008

BULLIVANT HOUSER BAILEY PC

26 By: /s/ Samuel H. Ruby

Samuel H. Ruby

Attorneys for Defendant and Counterclaimant  
UNITED STATES FIRE INSURANCE  
COMPANY

1 IT IS SO ORDERED.

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3 Dated: 6/27/08

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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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PILLSBURY & LEVINSON, LLP  
The Transamerica Pyramid  
600 Montgomery Street, 31st Floor · San Francisco, CA 94111

## **EXHIBIT C**

**Whitehouse, Judith**

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**From:** Whitehouse, Judith  
**Sent:** Thursday, June 19, 2008 4:37 PM  
**To:** 'Rick Larson'  
**Cc:** Ruby, Samuel  
**Subject:** RE: Yard inspections

Rick-Comments to order attached. Per our earlier conversation, we designate Yards 34 (FL), 86 (FL) and 6 (CA) for site inspections. If you are not agreeable to Yard 6, we will substitute another yard, most probably one in Southern California. Our construction consultant is: Chitester Management Systems, Inc.-Judith

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**From:** Rick Larson [mailto:rlarson@pillsburylevinson.com]  
**Sent:** Thursday, June 19, 2008 3:29 PM  
**To:** Whitehouse, Judith  
**Subject:** Yard inspections

Judith--

I won't be able to get back to you today regarding your request to inspect Yard 6. That shouldn't hold up approval of the form of order, which accurately reflects Judge LaPorte's ruling. If we were to nevertheless agree that you could inspect yard 6, I don't think that needs to be part of the order.

I'm in meetings the rest of the day, but around tomorrow (I know you aren't--I'll let Sam know our decision if I know tomorrow.)

Rick Larson  
Pillsbury & Levinson, LLP  
The Transamerica Pyramid  
600 Montgomery Street, 31st Floor  
San Francisco, CA 94111  
Tel: 415.433.8000  
Fax: 415.433.4816  
[rlarson@pillsburylevinson.com](mailto:rlarson@pillsburylevinson.com)

## **EXHIBIT D**

**Whitehouse, Judith**

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**From:** Rick Larson [rlarson@pillsburylevinson.com]  
**Sent:** Thursday, July 31, 2008 3:41 PM  
**To:** Whitehouse, Judith  
**Cc:** Ruby, Samuel; Vedica Puri  
**Subject:** Re: Copart inspections

Judith--

We were prepared to arrange for inspections, but you never attempted those arrangements. These are inspections by experts for the purpose of making expert reports. Obviously they had to be completed by the expert disclosure deadline and we specifically discussed that--that's why we extended the disclosure date to July 25 to give your expert adequate time to do the Florida inspections the week of July 14 and prepare a report by July 25. That deadline has passed.

RGL Forensic Accountants did not conduct the inspection of Yard 6, and would not be conducting the inspections of the other yards either. Those inspections are hardly "supplemental" to its report. Even if RGL were conducting the inspections, it would be for the purpose of formulating "new opinions" and would be improper.

You will have to bring a motion.

Rick

On Jul 31, 2008, at 3:05 PM, Whitehouse, Judith wrote:

Rick-The Stipulation and Proposed Order Re Extension of Discovery Deadline for Completion of Depositions signed by Judge Wilken explicitly states that "Deadlines for three site inspections requested by USFIC to be determined by agreement of the parties." The deadline for the site inspections was not tied to the expert witness disclosure deadline, or any other deadline, for that matter, but was to be determined by agreement of the parties. I do not believe any agreement was reached, other than for the date of the San Martin inspection, and there is no reason why the Florida inspections cannot go forward now. Moreover, the results of the yard inspections are supplemental to the analysis and conclusions included in the report by RGL regarding damages, rather than supplemental to the report of Chitester Mangement regarding Yard 105, and as such, are proper. Having myself attended the inspection in San Martin, I did not observe any disruption to the activity at the yard during the inspection, and would not expect anything different at the already approved inspections in Florida. Please let me know when we can schedule the two remaining inspections in Florida during the week of August 11.

---

**From:** Rick Larson [mailto:rlarson@pillsburylevinson.com]  
**Sent:** Thursday, July 31, 2008 10:16 AM  
**To:** Whitehouse, Judith  
**Cc:** Ruby, Samuel; Vedica Puri  
**Subject:** Re: Copart inspections

Judith--

You well know that we moved the expert disclosure date to July 25 specifically at your request so that you could complete the two Florida inspections and related reports. Of course, we made the extension mutual. The fact remains that you did not complete the inspections and, indeed, made no effort to do so before this deadline.

Supplemental expert reports that add new opinions after the disclosure deadline are improper. The report of Chitester Management that we did receive with your disclosures is a "damage assessment" of Yard 105. It has nothing to say even about Yard 6, although that inspection was allowed on July 11 and completed two weeks before the report. A report now regarding opinions as to replacement cost value of Yards 6, 34 and 86 would be an entirely new report with new opinions and would be improper. Accordingly, there is no purpose for the inspections of Yards 34 and 86 at this point and we will not allow the disruption of activity at those yards for inspections that can no longer serve any purpose in this litigation.

Rick

On Jul 30, 2008, at 4:38 PM, Whitehouse, Judith wrote:

Rick-We delayed the first site inspection until after July 10 specifically at your request, and arranged for it to be in California so you could attend. We moved the expert disclosure date to July 25 to accommodate everyone's schedule. I believe a supplemental report dealing with the site inspections would be proper, given that one of the inspections has already taken place. Please let me know what days during the week of August 11 are workable for the inspections in Florida. -Judith

---

**From:** Rick Larson [<mailto:rlarson@pillsburylevinson.com>]  
**Sent:** Wednesday, July 30, 2008 9:08 AM  
**To:** Whitehouse, Judith  
**Cc:** Vedica Puri  
**Subject:** Re: Copart inspections

Judith--

Any expert report at this point would be late and improper, so I don't see the point of the inspections. We moved the expert disclosure date to July 25 specifically so you could complete the inspections and reports. At the inspection of Yard 6 on July 11, you told me you would call me on Monday July 14 to arrange the Florida yard inspections. I never heard from you until now, after the deadline has passed.

Rick

On Jul 30, 2008, at 8:59 AM, Whitehouse, Judith wrote:

Rick-We'd like to schedule the remaining two site inspections in Florida for the week of August 11. As you may recall, we agreed to inspect yard 34 (Riverview, Florida) and yard 86 (Ft. Pierce, Florida). Please let me know which day works for each location. Thanks-Judith

---

**From:** Rick Larson [<mailto:rlarson@pillsburylevinson.com>]  
**Sent:** Tuesday, July 08, 2008 2:40 PM  
**To:** Whitehouse, Judith

**Cc:** Vedica Puri  
**Subject:** Copart inspections

Judith--

Prior to the inspections, your consultant will need to sign the Addendum A to the Confidentiality Agreement and Protective Order in this action. Copart considers all information obtained by such consultants and photographs taken to be confidential under the terms of that agreement.

Rick Larson  
Pillsbury & Levinson, LLP  
The Transamerica Pyramid  
600 Montgomery Street, 31st Floor  
San Francisco, CA 94111  
Tel: 415.433.8000  
Fax: 415.433.4816  
[rlarson@pillsburylevinson.com](mailto:rlarson@pillsburylevinson.com)

mail.bullivant.com made the following annotations

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Rick Larson  
Pillsbury & Levinson, LLP  
The Transamerica Pyramid  
600 Montgomery Street, 31st Floor  
San Francisco, CA 94111  
Tel: 415.433.8000  
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